

MRS. MURRAY FREEMAN

MAY 6 (legislative day, APRIL 30), 1942.—Ordered to be printed

Mr. HUGHES, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 246]

The Committee on Claims, to whom was referred the bill (H. R. 246) for the relief of Mrs. Murray Freeman, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 1809, Seventy-seventh Congress, second session, which is appended hereto and made a part of this report.

[H. Rept. No. 1809, 77th Cong., 2d sess.]

The Committee on Claims, to whom was referred the bill (H. R. 246) for the relief of Mrs. Murray Freeman, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended to pass.

The amendment is as follows:

Strike out all the language after the enacting clause and insert in lieu thereof: "That sections 17 to 20, inclusive, of the Act entitled 'An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes,' approved September 7, 1916, as amended, are hereby waived in favor of Mrs. Murray Freeman and her claim for compensation for the death of her husband, Henry Alney Freeman, who died on October 27, 1937, as the alleged result of injuries sustained by him while an employee of the Works Progress Administration, is authorized to be considered and acted upon under the remaining provisions of such Act, as amended, if her claim is filed not later than six months after the enactment of this Act: *Provided*, That no benefits hereunder shall accrue prior to the approval of this Act."

The purpose of the proposed legislation is to waive sections 17 to 20 of the Employees' Compensation Commission Act, September 7, 1916, as amended, and allow Mrs. Murray Freeman to file claim for the death of her husband, resulting from injuries sustained on October 14, 1935, while employed with the Works Progress Administration. The bill allows the Commission to consider the case on its merits and award compensation and award to which she is entitled under the act, if the Commission finds that death was result of injuries received while in the employ of the Works Progress Administration.

STATEMENT OF FACTS

From the file on the case, it appears that on October 14, 1935, Henry Alney Freeman was working as foreman on Works Progress Administration project No. 340-5; that he was attacked by two workers on the job, who struck him on the right side, chest, and back, with a shovel, and hit him over the head with a wrench; it appears that the reason for the attack was that Mr. Freeman had fired the two workers for being slackers, and that they had resented their discharge; that he was off work until October 22, 1935, and that due to the fact that the income of the family was completely cut off, he was forced to return to work at a time when he was not able; that he worked up until October 27, 1937, when he died.

The Employees' Compensation Commission, in a report dated October 31, 1941, recommends several amendments to the bill, and concludes that "in view of the foregoing, the Commission makes no recommendation as to the advisability of the enactment of the bill, H. R. 246."

Your committee has not gone into the facts of the case with a view of trying to determine whether or not the death of Mr. Freeman was a result of his employment, or whether or not he should be compensated for his disabilities. The bill merely waives the 1-year time limitation an employee of the United States, or his widow, has in which to file claim for compensation. The committee is of the opinion that every employee sustaining disability or injury while employed as an agent of the Government should have his case considered on its merits, and either allowed or disallowed. For the above reason, it is recommended that the bill, as amended, be passed. Appended hereto is the report of the Employees' Compensation Commission, together with other pertinent evidence.

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION,
Washington, October 31, 1941.

CHAIRMAN, COMMITTEE ON CLAIMS,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: Reference is made to your request for the Commission's report upon the bill (H. R. 246) for the relief of Mrs. Murray Freeman. Your request of September 8, 1941, addressed to Hon. Howard O. Hunter, Commissioner, Work Projects Administration, for a report on this bill has been referred to the Commission by the Work Projects Administration for appropriate action. The bill provides as follows:

"That any law, statute, rule, or regulation of limitation to the contrary notwithstanding, the United States Employees' Compensation Commission be, and it is hereby, authorized and directed to hear and determine the claim of Mrs. Murray Freeman, of Fort Smith, Arkansas, and to make such award or awards to her as she may be entitled to receive by reason of the death of her husband, Henry Alney Freeman, who died on the 27th day of October 1937 as a result of injuries received by the latter in the course of his employment as an employee of the Works Progress Administration."

It appears from the records of the Commission that H. A. Freeman, a former supervisory employee of the Work Projects Administration, was injured on October 14, 1935, when he was attacked and beaten by two employees, one of whom he was attempting to discharge for insubordination; that as a result of said attack H. A. Freeman suffered a contusion of the right side of the chest which apparently caused some internal bleeding, as blood was found in his sputum by the attending physician.

On December 23, 1935, the Commission received a claim (Form C. A. 4) for compensation in which H. A. Freeman claimed compensation for disability resulting from his injury; that the Commission approved the claim and compensation was thereafter paid to H. A. Freeman for total temporary disability, from October 18, 1935, to October 21, 1935, inclusive, in the amount of \$7.78. The Commission also paid medical expenses amounting to \$13, making a total expenditure in this case of \$20.78.

The first information which the Commission received relative to the death of Mr. Freeman was contained in a letter dated July 26, 1940, received from Hon. Fado Cravens, Member of Congress, in which he inquired concerning the status of Mrs. Freeman's claim for compensation. On October 25, 1940, a claim for compensation (on Form C. A. 5) was received from Mrs. Murray Freeman, alleging that Mr. Freeman's death occurred on October 27, 1937. It appears from the physician's certificate on the claim that the cause of Mr. Freeman's death was retroperitoneal sarcoma. The claim of Mrs. Freeman was disallowed on Novem-

ber 29, 1940, on the ground that it had not been filed within 1 year from the date of death as is required by section 20 of the Compensation Act, and Mrs. Freeman was so advised by letter dated November 29, 1940.

No medical evidence has been submitted in this case showing or tending to show that Mr. Freeman's death was in any way related to the injuries he sustained on October 14, 1935. The physician's certificate, included in the claim filed by Mrs. Freeman, was executed by the same physician who had on October 14, 1935, attended the employee on account of his contusions. This physician in response to the printed question upon the claim form filed October 25, 1940, as to contributory cause of death reported "Don't know," and in response to a printed question seeking an opinion as to whether death was due to injury (having reference to the assault) the physician reported "Do not think so," with the following remarks: "I do not know the origin or cause of this retroperitoneal sarcoma." On October 7, 1940, the Commission received a letter, dated October 2, 1940, addressed to Mr. Ben T. Rolfe, State compensation officer of the Work Projects Administration, written by Mr. Elwood L. Wheeler, compensation representative of the Work Projects Administration, which comments upon result of an interview between Mr. Wheeler and Mrs. Freeman. This letter reads in part as follows:

"Mrs. Freeman advises me that she does not care to complete this form. She stated that Dr. A. A. Blair, physician attending her deceased husband in October 1935, when he received an injury on the project, and attending him during his last illness, has stated to her several times that there was no connection between the injury and the cause of his death. Mrs. Freeman states that she is convinced that Dr. Blair is wrong. That Mr. Freeman was never sick before the injury. She admits that he died from a tumor in the abdomen but believes that this condition was caused by his injury. She states that inasmuch as Dr. Blair has made this statement to her several times she does not believe there is any point in making the formal claim."

The proposed measure is apparently intended to have the effect of waiving in favor of Mrs. Murray Freeman the bar of the time limitations in section 20 of the Federal Employees' Compensation Act of September 7, 1916, requiring claim for compensation be filed within 1 year from the date of the death, and to leave the Commission free to determine the merits of Mrs. Freeman's claim, and to afford her such measure of relief as the facts, when established, may show her to be entitled under the Federal Employees' Compensation Act of September 7, 1916. In thus viewing the bill, the Commission interprets the expression "who died on the 27th day of October 1937 as a result of injuries received by the latter in the course of his employment as an employee of the Works Progress Administration," in lines 9, 10, 11, and 12 of the bill, as descriptive only and as serving merely to identify the alleged injury resulting in death. As, however, it has sometimes been contended that similar language has constituted a legislative determination of the fact of injury and ensuing disability or death, precluding the Commission from determining the facts relative thereto, it is suggested, if the bill otherwise receives favorable consideration, that after the word "who" in line 9 of the bill there be inserted the words "is alleged to have."

As the claim for death benefits in this case could not be considered upon its merits in view of the bar of the limitations, no determination was made by the Commission with respect to the merits of the claim for death benefits, and the Commission is therefore unable to express any opinion thereon.

It is noted that there is no provision in the bill indicating when the benefits thereunder, if allowed, shall begin to accrue. If it be intended that the bill shall not have a retroactive effect, this intention should be signified therein, as otherwise it might be held to require any benefits which might be granted pursuant to authority given in the bill in its present form, to begin to accrue from the date of death.

In view of the foregoing, the Commission makes no recommendation as to the advisability of the enactment of the bill H. R. 246.

Very truly yours,

JNO. J. KEEGAN,
Acting Chairman.

AFFIDAVIT

STATE OF ARKANSAS,
County of Sebastian, ss:

My name is Mrs. Murray Freeman. I am 76 years of age and reside at 107 North Eighteenth Street in the city of Fort Smith, Ark. I am the widow of Henry Alney Freeman, deceased, who died October 27, 1937, at our home 107 North Eighteenth Street in Fort Smith, Ark.

On October 14, 1935, my husband, Henry A. Freeman, was working as a foreman on Works Progress Administration project No. 340-5 when he was attacked by a worker on the job. He was struck in the right side of chest and back with a shovel, while another worker struck him in the head with a wrench. This attack was caused by Mr. Freeman firing the worker. He was off from work until October 22, 1935, and was paid \$7.78 in compensation. He was unable to go back to work but we could not live on the small amount of compensation, so he got out of bed and returned to work when he was not able to work. He did not improve in health and gradually began to go down. Dr. A. A. Blair, of Fort Smith, Ark., treated Mr. Freeman for the injury and treated him at various times from October 22 when he returned to the job until his death on October 27, 1937.

Before this injury on October 14, 1935, on Works Progress Administration project No. 340-5, Mr. Freeman was a healthy man and was not sick a day that I know of. I was married to Mr. Freeman in June 1910.

Before Mr. Freeman's death we went to Kansas City, where Mr. Freeman was examined by a doctor there. I do not recall the name of the doctor. He advised that there was a growth of some kind in him and that he had only a short time to live.

Mr. Freeman worked from October 22, 1935, when he returned after the accident of October 14, until February 1937. He did work almost continuously from October 22 to February 1937, but all during that time he really was physically unable to work. He would be in pain and suffer all night; he would then get up in the morning and go and work. He would drive his car home and immediately go to bed until next morning. The last of February 1937 his condition became so bad that he could go no longer. From the last of February 1937 until his death, October 7, 1937, he was in bed, unable to do anything. He was very sick during those months and in great pain and suffering.

Mr. Freeman never was sick before his injury on October 14, 1935, on the job and it is my honest opinion that the injuries he received in that attack was the direct cause of his death.

There were no children born of the marriage of myself to Mr. Freeman. I am in destitute circumstances and feel that I should be given relief for the death of my late husband whose death I am positive was caused by the attack on him.

Dr. A. A. Blair and the doctor who examined Mr. Freeman in Kansas City are the only doctors that treated Mr. Freeman between the date of his injury and his death in October 1937. In April 1937, Dr. Blair operated on Mr. Freeman. He advised that there was a tumor and he did not attempt to remove it. After being in the hospital a few days he was removed to our home, where he was until his death.

Mr. Freeman never had a well day from the date he was injured on Work Projects Administration until his death and despite any statements by the doctor to the contrary his death was caused by this attack. He was only able to continue his work from great determination and the necessity to make a living for us.

Mr. Freeman left no father, mother, or other dependents, except myself, and an afflicted daughter, now 47 years of age, by a former marriage whom Mr. Freeman supported in his lifetime and who is now being cared for by me. The father of the afflicted daughter has been dead many years.

Signed this 22d day of October 1940.

MRS. MURRAY FREEMAN.

Subscribed and sworn to before me this 22d day of October 1940.

_____, Notary Public.

STATEMENT OF WITNESSES

I know that Mr. Freeman has had to tell Mr. Stevens repeatedly to quit standing around and go to work. October 14, 1935, Mr. Freeman, who is foreman on this project, told Mr. Stevens again to do some work. Mr. Stevens asked Mr. Freeman: "If he didn't like what he was doing," to which Mr. Freeman stated he did not and that if he did not want to work that he could quit. Mr. Stevens stated that he would not quit but wanted Mr. Freeman to fire him if he thought he could make it stick, of which Mr. Freeman did fire him. At 1 p. m. Mr. Freeman gave Mr. Stevens his card. As Freeman handed him his card Stevens started to fight. At this time another party by name Eldon Shepherd, also a worker on W. P. A., got behind Mr. Freeman's back and hit him several times. The blows broke one rib and fractured another.

Signed this 17th day of October 1935.

LOUIS N. WILLIAMS.

I heard Mr. Freeman tell Mr. Stevens to shovel some dirt, to which Mr. Stevens said that he had been working and several other things that I couldn't understand. Later Mr. Freeman walked by where Mr. Stevens was standing. Mr. Stevens asked Mr. Freeman if he wasn't doing enough work to suit him, to which Mr. Freeman said no and that if he didn't want to work he could quit. Mr. Stevens stated that he would not quit and for him to fire him. This Mr. Freeman did, Oct. 14, 1935, 1 p. m. Mr. Freeman gave Mr. Stevens his work card. Mr. Stevens slapped Freeman a time or two. Another party, by name Eldon Shepherd, got behind his back and hit him 3 or 4 times in the side, causing an injury. Mr. Eldon Shepherd also grabbed a pick and tried to hit Mr. Freeman while he was on the ground. Jack Ellis grabbed and held Mr. Shepherd.

Signed this 17th day of October 1935.

RICHARD L. WILLIS.

OFFICIAL SUPERIOR'S REPORT OF INJURY

Department: Works Progress Administration. Place of employment: Project No. 340-5, Newlon Road and Friscoe Railroad track, Fort Smith, Ark. Reporting office: Fort Smith, Ark. Name of superintendent or foreman in charge when injury occurred: H. A. Freeman.

Name of injured employee: H. A. Freeman; age, 54; sex, male; race, white. Home address: 709 South Seventeenth Street, Fort Smith, Ark. Occupation and division: Works Progress Administration, foreman. Was employee doing his regular work? Yes.

Rate of pay on date of injury: \$70 per month. Employee begins work at 8 a. m.; regular day's work ends 4 p. m. Hours worked per day: 7; days paid per week, 5.

Place where injury occurred: Works Progress Administration project 340-5, Newlon Road and Friscoe Railroad tracks. Date of injury: October 14, 1935; day of week, Monday; hour of day, 1 p. m. Date employee stopped work: October 14, 1935; day of week, Monday; hour of day, 1:30 p. m.

Did injury cause loss of any member or part of member? No. Was employee injured while in performance of duty? Yes. Was injury caused by: (a) Willful misconduct of the employee? no; (b) intention of employee to bring about injury or death of himself or another? no; (c) employee's intoxication? no. Was written notice of injury given within 48 hours? Yes. If not, did immediate superior have actual knowledge of injury? Yes.

Names and addresses of witnesses to injury: Louis N. Williams, South Fort Smith, Ark.; Richard L. Willis, block 26, Irwin Street, Bonn Addition, Fort Smith, Ark.

Was injury caused by a third party other than a Government employee or agency? No.

Signed this 15th day of October 1935, at Fort Smith.

I hereby certify the person named hereon was on the pay roll of the Works Progress Administration and receiving security payments at the rate specified on this form at the time of his reported injury.

TARWIN FORREST JOHNSON,
Timekeeper.

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